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Letter dated 24 October 2012 from the Permanent Representative of South Sudan to the United Nations addressed to the President of the Security Council

It gives me great pleasure to transmit the statement of my Foreign Minister at the African Union Peace and Security Council's high-level meeting in Addis Ababa that took place today, 24 October 2012 (see annex).

This statement highlights the support of the Republic of South Sudan for the African Union proposal on the Abyei Referendum, the need for a legitimate political consultative process in Southern Kordofan and Blue Nile, as well as the need for support to both States parties in implementing the signed agreements. It is the expressed opinion of the Republic of South Sudan that we must deal with these matters comprehensively in order to consolidate our unwavering commitment to peace with the neighbouring Republic of the Sudan.

I should be most grateful if the present letter and its annex could be circulated to the members of the Security Council as a document.

(*Signed*) Francis Mading **Deng**
Permanent Representative

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Annex to the letter dated 24 October 2012 from the Permanent Representative of South Sudan to the United Nations addressed to the President of the Security Council

Statement by H.E. Nhial Deng Nhial, Minister for Foreign Affairs and International Cooperation, Republic of South Sudan, at the meeting of the African Union Peace and Security Council Addis Ababa, 24 October 2012

The Government of the Republic of South Sudan is grateful for the opportunity to brief the African Union Peace and Security Council on the agreements signed, here in Addis Ababa on 27 September 2012, between our country and the Republic of Sudan, and to offer our suggestions and views both on the implementation of these agreements and the process by which outstanding issues must be definitively resolved.

May I first take the opportunity, on behalf of my Government, to congratulate the Chairperson of the Commission on the assumption of her responsibilities on 15 October 2012. Madam Chairperson, you have the full support of my Government and we wish you well in your work to address the many challenges our continent faces.

Exactly six months ago my colleague, Minister Deng Alor Kuol, briefed this Council on the state of relations between Sudan and South Sudan. Our countries had not agreed on all of the terms of our separation and, as a result, our relations deteriorated and we appeared to be on the brink of a broader conflict. However, South Sudan stated clearly then what has always been our position: that war should be in our past and that peace and prosperity should be our future. Now, with the help of the African Union and of this Council, supported in particular by the High-level Implementation Panel, and with the endorsement of the United Nations Security Council, we have established a foundation for a more productive relationship, in which two viable States living side by side in peace can emerge. We are thus on the brink of a new stage in our relations, in which we hope that — at last — our two States can build peace and foster development for the benefit of all of our peoples.

As you know, the last round of negotiations between our two countries culminated in the signing of nine agreements. These agreements specify how the Republics of Sudan and South Sudan will arrange their future relations in the fields of security, borders, trade, the four freedoms and the health of our economies. As President Mbeki, Chair of the Panel, has himself pointed out: "The agreement sets a unique benchmark between two African sovereign States for how African neighbours should construct relations to give concrete reality to the objectives, shared by the peoples of our continent, of African integration, unity, solidarity and mutually beneficial cooperation."

As the members of this esteemed Council are also aware, these agreements have now been ratified by the South Sudan Legislative Assembly and by the National Assembly in Khartoum. The Republic of South Sudan stands ready to staff and establish the variety of implementation mechanisms created by the agreements.

The agreements include generous concessions by South Sudan in order to ensure peace and stability between our two countries. South Sudan has made

significant financial sacrifices in the interest of peace. The transitional financial arrangement whereby South Sudan will provide over 3 billion United States dollars to Sudan over the next three and a half years, in addition to the forgiveness of 4.9 billion United States dollars in debt, represents the most generous contribution by any State in Africa to the welfare of its neighbour.

The agreement to open the borders is another important step towards building a constructive relationship between South Sudan and Sudan. It will allow more of our people to return to South Sudan, it will increase the cross-border trade in goods and services, especially among the war-torn border communities, and it will generally help to revitalize the economies of both countries.

On behalf of my Government, I would like to pay tribute to the members of the High-level Implementation Panel for their efforts. We are most grateful for the dedication and perseverance that Presidents Mbeki, Buyoya and Abu-Bakr have brought to the negotiations in the past two and a half years. We also wish to thank the members of this Council, the United Nations Security Council and all those in the international community who have provided political and technical support to the parties during these negotiations.

On past experience, our States will still need some support to implement these agreements, which establish several commissions and mechanisms. There may be times when the parties will be unable to resolve implementation issues bilaterally. We respectfully invite the members of this Council to prepare for this eventuality and to consider what implementation modalities could be made available to the parties.

Despite all that has been achieved, which is not inconsiderable, there nonetheless remain issues that require the urgent attention of this Council: the final resolution of the status of Abyei and the issue of the disputed and claimed border areas between our two countries. We regret that it was not possible to reach a fully comprehensive agreement in Addis Ababa at the end of September.

Before touching on these issues in more detail, please permit me to remind you that the achievements of the past seven years have been based firmly on the groundwork established by the Comprehensive Peace Agreement of 2005. Those provisions of the Comprehensive Peace Agreement which have not yet been implemented, with regard to the status of Abyei, the demarcation of the north-south border and the Protocols of the two states of Southern Kordofan and Blue Nile, remain as challenges to all of us who wish to build two viable States living in peace and cooperation with each other.

I further note that the communiqué issued by this Council on 24 April of this year clearly called upon the parties to reach definitive agreements on all outstanding issues within three months. This included, and I quote from paragraph 13 of the communiqué: "resolution of the status of the disputed and claimed border areas and the demarcation of the border, and the final status of Abyei".

As Council members are aware, South Sudan accepted without reservation the High-level Implementation Panel's last compromise proposal on Abyei. I must also remind this Council that this was not the first time that we have compromised on the issue of Abyei in the interest of peace. When we signed the Comprehensive Peace Agreement in 2005, it called for a demarcation of the boundaries of the Abyei Area and stipulated that a referendum be held in Abyei on 9 January 2011, to allow the

Ngok Dinka and other residents of the Area to decide for themselves if they wished to be part of the North or the South. The findings of the Abyei Boundary Commission were rejected by the President of Sudan. We next agreed to refer the boundary issue to international arbitration and accepted without reservation the finding of the arbitral panel, which reduced the size of the area owned and claimed by the nine Ngok Dinka chiefdoms recognized under the Comprehensive Peace Agreement. This finding is binding, regardless of the objections raised to it by the Republic of Sudan. Despite these compromises on our side, the Abyei referendum stipulated by the Comprehensive Peace Agreement was never held, due to continued obstructions from the Republic of Sudan. Sudan then overran the Abyei Area in May 2011, displacing over 100,000 people and destroying Abyei Town for the second time in four years. One month later, we signed an agreement with Sudan to enhance the Comprehensive Peace Agreement's Abyei Protocol. The agreement was an attempt to diffuse tensions in the Abyei Area. The new agreement maintained the Abyei referendum, and detailed obligations for our two countries, including the withdrawal of their respective forces from the Area. South Sudan has withdrawn all of its armed forces from Abyei, whereas Sudan continues to have elements of the Sudanese Armed Forces in the name of an armed "oil police" stationed in Diffra (Keich), despite international demands for their withdrawal.

Since the African Union Peace and Security Council issued its road map in April of this year, Sudan has continued to block progress on this dossier. The Panel's last compromise proposal on Abyei, put to the parties in September, was very clear. Sudan had no basis for rejecting it. South Sudan has practically run out of compromises and the Republic of Sudan must accept that a referendum in Abyei be held by October 2013, and the referendum commission must be chaired by a nominee of the African Union. We invite the Council to issue a decision that is fully consistent with the Panel's last proposal.

We therefore urge the Council to adopt the African Union High-level Implementation Panel's 21 September 2012 "Proposal on the final status of the Abyei Area". This proposal, which the Government of South Sudan has, in the interest of durable peace with Sudan, unreservedly endorsed and is ready to fully implement, derives its legitimacy and authority from the fact that it represents the spirit and gist of the Abyei Protocol of 2005, which the parties crafted on the basis of their own free will. The Abyei Protocol enshrines the commitment of both South Sudan and Sudan to a referendum as the sole mechanism for resolving the problem of Abyei and at no point during the Comprehensive Peace Agreement negotiations did either party contemplate partition as a means of resolving the dispute over the Area. Therefore Sudan's novel contention that Abyei should be partitioned between the two States, if accepted, would not only amount to a travesty of justice for the Ngok Dinka whose Abyei homeland is being progressively chipped away by Khartoum, but would also reopen the debate over Abyei, with potentially fatal political consequences for the two States.

Excellencies, we urge you to take the bold decision of not postponing a decision on the African Union High-level Implementation Panel's proposal on the final status of Abyei. We fully understand that the temptation to withhold such a decision pending further negotiations by the parties may be too strong to resist. Nevertheless we call upon you to proceed with a resolution on the matter in the interest of consolidating the forward momentum generated by the recently concluded agreements between South Sudan and Sudan.

As a matter of principle, we have never been averse to continuing dialogue with Sudan on any issue, no matter how hopeless that may seem, but, in the present case in particular, it is hard to see much value in further discussions with Khartoum on Abyei. The reasons are quite obvious. The African Union High-level Implementation Panel had afforded the two sides almost unlimited opportunities to engage on the issue and at the highest levels. Indeed the issue of Abyei, for the best part of the negotiation period, was exclusively assigned to Presidents Salva Kiir and Omer Al-Bashir to handle, both prior to and after the independence of South Sudan. And as is to be recalled, all their endeavours failed to bear any fruit. So it remains to be seen what a few more weeks of negotiations can achieve that protracted negotiation sessions between the two Presidents on Abyei could not accomplish. The other question now is, who are those from the two sides that will undertake negotiations on a matter on which the two Presidents have failed to find a solution.

In the light of the latest presentations by South Sudan and Sudan on Abyei, it is becoming increasingly obvious that the parties' paths have started diverging away from the referendum exercise that they had mutually agreed to for Abyei as part of the Comprehensive Peace Agreement of 2005. Whereas South Sudan maintains its commitment to a referendum as the sole mechanism for determining Abyei's final political status, in conformity with the Abyei Protocol, the Republic of Sudan has clearly embarked on a new trajectory, namely, partition. The referendum and partition trajectories run in parallel and are therefore irreconcilable. What this means in practice is that even if the parties, at whatever level, were to resume negotiations on Abyei, they would certainly not be able to do so and reach agreement since they do not share a single common premise. It will be like going back to the drawing board. In our opinion such an eventuality must be avoided at all cost. Excellencies, it is in the light of these considerations that we earnestly reiterate our appeal to you to endorse the African Union High-level Implementation Panel's proposal on the final status of Abyei before you depart from Addis Ababa.

On the disputed and claimed border areas, we remind the Council that its 24 April decision required final agreement on the status of both these matters. Consequently, it is imperative that this Council adopt a resolution on the terms of reference for the experts that formally places both the disputed and claimed areas firmly within the mandate of the Panel. It is worth reminding your Excellencies that the clashes of April this year between Sudan and South Sudan were on the claimed area of Panthou (Heglig).

South Sudan has accepted the African Union High-level Implementation Panel's suggestions and proposed a mechanism for dealing with the disputed and claimed areas. It is in everyone's interests for there to be definitive solutions for all disputed and claimed areas. We welcome the appointment of the African Union Panel of Experts on Boundary Claims and Disputes between Sudan and South Sudan and we look forward to working with the Panel. Once its non-binding findings are issued, we are prepared to engage in limited and time-bound bilateral negotiations with the Republic of Sudan. We suggest that the parties should be invited back to brief this Council on their negotiations after a limited period. Thereafter, if our two States fail to agree — given that we have been negotiating these border issues since the signing of the Comprehensive Peace Agreement in 2005 — we must have the option to refer the issue of the disputed and claimed border areas and the demarcation of the border to international arbitration. Our approach here is fully consistent with the best practices of the African Union in dealing with border

disputes. We therefore invite this Council to issue a decision that includes support for that eventuality, should it be necessary.

I would be remiss if I did not briefly mention a third component of the Comprehensive Peace Agreement that remains unresolved, namely the fate of the peoples of Southern Kordofan and Southern Blue Nile. The Republic of South Sudan has offered its good offices to help resolve the ongoing humanitarian and security problems in any way we can. We deplore the unnecessary suffering of our Sudanese brothers and sisters across the border and have taken in several tens of thousands of them with the welcome help of the international community. We would very much prefer to see such help being delivered to them in their own home areas, as a result of the implementation of the humanitarian agreements signed by all parties and the negotiation of a cessation of hostilities. While all the parties have accepted these points, they have not yet been acted upon. There can be no military solution in the two areas — instead there must be a meaningful political process which addresses the legitimate grievances of the peoples of these areas, in accordance with the stipulations of the Comprehensive Peace Agreement and of the 28 June 2011 Agreement.

To conclude, my Government has done everything in its power to ensure that the Republic of South Sudan has complied fully with the provisions of this Council's communiqué of 24 April 2012, as well as with those of United Nations Security Council resolution 2046 (2012). While we work to implement the agreements that we signed last month, it is now up to the African Union to decide how to proceed with the remaining outstanding issues. My Government looks forward to hearing what the Council concludes and will act in accordance with its decisions.

Once again, we thank the members of this Council for their continued support to our two States in our pursuit of peace, stability and development.